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Attorneys for Defendant
 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

LAURA RESNANSKY, ET AL.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. C 13-5133 DMR

STIPULATION AND AGREEMENT OF
 COMPROMISE AND SETTLEMENT;
~~PROPOSED~~ ORDER; EXHIBIT A

It is hereby stipulated by and between the undersigned Plaintiffs and the UNITED STATES
 OF AMERICA, by and through their respective attorneys, as follows:

STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT; ~~PROPOSED~~ ORDER
 No. C 13-5133 DMR

1 WHEREAS, Plaintiffs filed the above-captioned action on November 4, 2013;

2 WHEREAS, Plaintiffs and Defendant wish to avoid any further litigation and controversy
3 and to settle and compromise fully any and all claims and issues that have been raised, or could have
4 been raised, in this action, which have transpired prior to the execution of this Settlement Agreement
5 (“Agreement”);

6 NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement,
7 and other good and valuable consideration, the Parties agree as follows:

8 1. **Agreement to Compromise Claims.** The parties do hereby agree to settle and
9 compromise each and every claim of any kind, whether known or unknown, arising directly or
10 indirectly from the acts or omissions that gave rise to the above-captioned action under the terms and
11 conditions set forth in this Agreement.

12 2. **Definition of “United States of America.”** As used in this Agreement, the United States
13 of America shall include its current and former agents, servants, employees, and attorneys, as well as
14 the Presidio Trust and/or its current and former agents, servants, employees, and attorneys.

15 3. **Settlement Amount.** The United States of America agrees to pay the sum of one million
16 dollars and zero cents (\$1,000,000.00) (“Settlement Amount”), which sum shall be in full settlement
17 and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and
18 nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen
19 personal injuries, damage to property and the consequences thereof, resulting, and to result, from the
20 subject matter of this settlement, including any claims for wrongful death, for which Plaintiffs or
21 their guardians, heirs, executors, administrators, or assigns, and each of them, now have or may
22 hereafter acquire against the United States of America.

23 4. **Release.** Plaintiffs and their guardians, heirs, executors, administrators or assigns hereby
24 agree to accept the Settlement Amount in full settlement and satisfaction of any and all claims,
25 demands, rights, and causes of action of whatsoever kind and nature, including claims for wrongful
26 death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen
27 personal injuries, damage to property and the consequences thereof which they may have or
28 hereafter acquire against the United States of America on account of the same subject matter that

1 gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type
2 whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.
3 Plaintiffs and their guardians, heirs, executors, administrators or assigns further agree to reimburse,
4 indemnify and hold harmless the United States of America from and against any and all such causes
5 of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from
6 further litigation or the prosecution of claims by Plaintiffs or their guardians, heirs, executors,
7 administrators or assigns against any third party or against the United States, including claims for
8 wrongful death.

9 5. **Dismissal of Action.** In consideration of the payment of the Settlement Amount and the
10 other terms of this Agreement, Plaintiffs shall immediately upon execution of this Agreement also
11 execute a Stipulation of Dismissal, a copy of which is attached hereto as Exhibit A. The Stipulation
12 of Dismissal shall dismiss, with prejudice, all claims asserted in this action, or that could have been
13 asserted in this action. The fully executed Stipulation of Dismissal will be held by Defendant's
14 attorney and will be filed within five (5) business days of receipt by Plaintiffs' attorney of the
15 Settlement Amount.

16 6. **No Admission of Liability.** This stipulation for compromise settlement is not intended to
17 be, and should not be construed as, an admission of liability or fault on the part of the United States,
18 and it is specifically denied that it is liable to the Plaintiffs. This settlement is entered into by all
19 parties for the purpose of compromising disputed claims and avoiding the expenses and risks of
20 further litigation.

21 7. **Parties Bear Their Own Costs.** It is also agreed, by and among the parties, that the
22 respective parties will each bear their own costs, fees, and expenses and that any attorney's fees
23 owed by the Plaintiffs will be paid out of the Settlement Amount and not in addition thereto.

24 8. **Attorney's Fees.** It is also understood by and among the parties that pursuant to Title 28,
25 United States Code, Section 2678, attorney's fees for services rendered in connection with this
26 action shall not exceed 25 per centum of the amount of the compromise settlement.

27 9. **Authority.** The persons signing this Agreement warrant and represent that they possess
28 full authority to bind the persons on whose behalf they are signing to the terms of the settlement.

1 10. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code
2 Section 1542 are set forth below:

3 "A general release does not extend to claims which the creditor does not know or
4 suspect to exist in his or her favor at the time of executing the release, which if known
5 by him or her must have materially affected his or her settlement with the debtor."

6 Plaintiffs having been apprised of the statutory language of Civil Code Section 1542 by their
7 attorney, and fully understanding the same, nevertheless elect to waive the benefits of any and all
8 rights they may have pursuant to the provision of that statute and any similar provision of federal
9 law. Plaintiffs understand that, if the facts concerning Plaintiffs' injuries and the liability of the
10 government for damages pertaining thereto are found hereinafter to be other than or different from
11 the facts now believed by them to be true, the Agreement shall be and remain effective
12 notwithstanding such material difference.

13 11(a). **Payment by Presidio Trust by Electronic Funds Transfer.** Payment of a portion of
14 the Settlement Amount will be made by the Presidio Trust and will be deposited by electronic fund
15 transfer in the amount of three hundred ninety two thousand eight hundred sixty nine dollars and
16 ninety cents (\$392,869.90) to the bank account Plaintiffs have designated to the undersigned
17 Assistant United States Attorney. Plaintiffs' attorney agrees to distribute the settlement proceeds to
18 the Plaintiffs. Plaintiffs and their attorney have been informed that payment of the Settlement
19 Amount may take thirty (30) days or more from the date that the Court "so orders" this Agreement to
20 process.

21 11(b). **Payment by Scottsdale Insurance Company by Check.** Payment of a portion of
22 the Settlement Amount will be made by Scottsdale Insurance Company by check for six hundred
23 seven thousand one hundred thirty dollars and ten cents (\$607,130.10) and made payable to "Laura
24 Resnansky, Kris Jacob and their attorneys Walkup Melodia Kelly & Schoenberger." The check will
25 be mailed to Plaintiffs' attorney at the following address: 650 California Street, 26th Floor, San
26 Francisco, CA 94108. Plaintiffs' attorney agrees to distribute the settlement proceeds to the
27 Plaintiffs. Plaintiffs and their attorney have been informed that payment of the Settlement Amount
28 may take thirty (30) days or more from the date that the Court "so orders" this Agreement to process.

1 12. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiffs or
 2 Plaintiffs' counsel based on payment of the Settlement Amount, Plaintiffs or Plaintiffs' counsel shall
 3 be solely responsible for paying any such determined liability from any government agency.
 4 Nothing in this Agreement constitutes an agreement by the United States of America concerning the
 5 characterization of the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of
 6 the United States Code.

7 13. **Construction.** Each party hereby stipulates that it has been represented by and has
 8 relied upon independent counsel in the negotiations for the preparation of this Agreement, that it has
 9 had the contents of the Agreement fully explained to it by such counsel, and is fully aware of and
 10 understands all of the terms of the Agreement and the legal consequences thereof. For purposes of
 11 construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement
 12 and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

13 14. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
 14 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any
 15 way be affected or impaired thereby.

16 15. **Integration.** This instrument shall constitute the entire Agreement between the parties,
 17 and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered
 18 into by the parties hereto with the advice of counsel, who have explained the legal effect of this
 19 Agreement. The parties further acknowledge that no warranties or representations have been made
 20 on any subject other than as set forth in this Agreement. This Agreement may not be altered,
 21 modified or otherwise changed in any respect except by writing, duly executed by all of the parties
 22 or their authorized representatives.

23 //

24 //

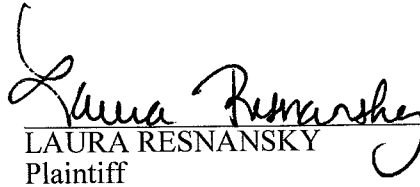
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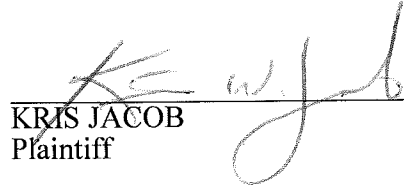
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1
2 DATED: 6/1/2015


LAURA RESNANSKY
Plaintiff

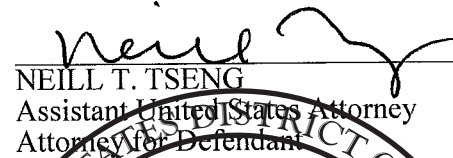
3
4
5 DATED:


KRIS JACOB
Plaintiff

6
7
8 DATED: 5/28/15


DOUGLAS SAELTZER
Attorney for Plaintiffs

9
10
11 DATED: 6/5/15


NEILL T. TSENG
Assistant United States Attorney
Attorney for Defendant

12
13
14 PURSUANT TO STIPULATION, IT IS SO ORDERED

15
16
17 DATED: June 8, 2015

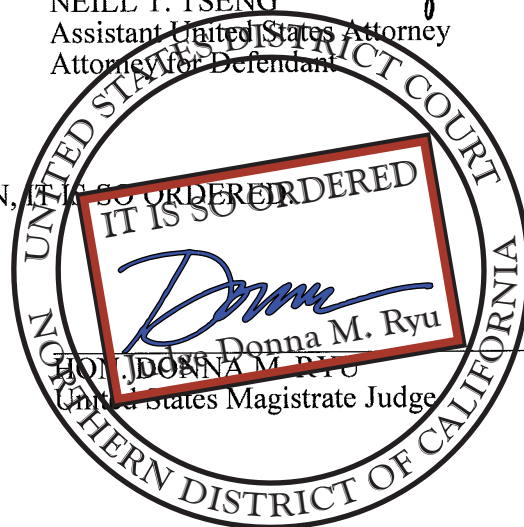


EXHIBIT A

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UNITED STATES OF AMERICA

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NORTHERN DISTRICT OF CALIFORNIA
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LAURA RESNANSKY, ET AL.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. C 13-5133 DMR

STIPULATION TO DISMISS WITH
PREJUDICE ALL CLAIMS AGAINST
DEFENDANT UNITED STATES OF AMERICA;
[PROPOSED] ORDER

Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiffs LAURA RESNANSKY and KRIS JACOB and Defendant UNITED STATES OF AMERICA hereby stipulate to dismiss with prejudice the above-captioned action, including all claims that were asserted therein. Each party will bear its own costs and attorneys' fees.

DATED:

LAURA RESNANSKY
Plaintiff

DATED:

KRIS JACOB
Plaintiff

DATED:

DOUGLAS SAELTZER
Attorney for Plaintiffs

DATED:

NEILL T. TSENG
Assistant United States Attorney
Attorney for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED:

HON. DONNA M. RYU
United States Magistrate Judge